

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN JEROME TOPP,

Defendant-Appellant.

UNPUBLISHED

April 14, 2011

No. 296248

Genesee Circuit Court

LC No. 05-017112-FC

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from the trial court's order denying his motion for relief from judgment. We dismiss this appeal as moot.

Defendant was charged with one count each of first-, second-, and third-degree criminal sexual conduct, each charge in connection with a victim under thirteen years old, defendant's niece. Defendant pleaded nolo contendere to one count of third-degree criminal sexual conduct, MCL 750.520d, and the court dismissed the remaining charges.

The trial court sentenced defendant to serve five to 15 years in prison. At sentencing, there were no objections to the guidelines scoring of Offense Variable (OV) 11, which concerns sexual penetrations, at 50 points, as prescribed where the sentencing offense involved two or more penetrations beyond the one underlying the charge. MCL 777.41(1)(a), (2)(a), and (2)(c). In a subsequent motion for relief from judgment, defendant argued that the trial court erred in looking beyond the sentencing offense in counting penetrations for purposes of scoring that variable. See *People v Johnson*, 474 Mich 96, 101; 712 NW2d 703 (2006). Defendant raised this unpreserved issue under the rubric of ineffective assistance of counsel. See *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001).

However, where a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). "As a general rule, an appellate court will not decide moot issues." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Defendant began serving his five-year minimum sentence on April 20, 2006, with credit for 188 days served. The Department of Corrections' Offender Tracking Information System turns up that defendant has in fact served his minimum sentence as of October 13, 2010.

Because defendant has served the minimum sentence he now challenges, the sentencing issues he raises in this appeal are now moot. Accordingly, we eschew addressing defendant's issues and dismiss.

Appeal dismissed as moot.

/s/ Pat M. Donofrio

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens